

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

H. PATRICK BARCLAY, 97-A-5659,

Plaintiff,

-v-

Officer POLANO, et al.,

Defendants.

DECISION AND ORDER
03-CV-6585CJS(Fe)

This is an action pursuant to 42 U.S.C. § 1983. Now before the Court is the pro se plaintiff's motion [#13] for a preliminary injunction. For the reasons that follow, the application is denied.

BACKGROUND

Plaintiff is an inmate at Auburn Correctional Facility. In this action, plaintiff raises a variety of claims, which the Court has discussed in two previous Decisions and Orders [#5][#7]. For purposes of this application, it is sufficient to note that plaintiff claims that officials at Attica Correctional facility are refusing to place him in the correct educational program. In that regard, plaintiff contends that he has a college education, while officials at Attica contend that testing indicates that plaintiff should be placed in a pre-G.E.D. level educational program. Plaintiff further contends that because he refuses that placement, defendants have restricted his privileges. Plaintiff also expresses fear that his walking cane will be taken away. Plaintiff asks the Court to forbid defendants from placing him in a pre-G.E.D. educational program and from taking his cane.

ANALYSIS

The standard to be applied in this instance is well settled:

To obtain a preliminary injunction, a plaintiff must establish: (1) the likelihood of irreparable injury in the absence of such an injunction, and (2) either (a) likelihood of success on the merits or (b) sufficiently serious questions going to the merits to make them a fair ground for litigation plus a balance of hardships tipping decidedly in its favor.

Malletier v. Burlington Coat Factory Warehouse Corp., 426 F.3d 532, 537 (2d Cir. 2005)


(citations and internal quotation marks omitted). Plaintiff has not demonstrated that he is entitled to injunctive relief under this standard.

CONCLUSION

Plaintiff's application [#13] for injunctive relief is denied.

SO ORDERED.

Dated: December 23, 2005
Rochester, New York



CHARLES J. STRAGUSA
United States District Judge